82-1117

No.

Supreme Court, U.S.
FILED
JAN 9 1983
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

JEROME P. JAMROCH, Individually and as Representative of a Class of Persons Similarly Situated,

Petitioner,

vs.

MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, Illinois; EDWARD J. ROSEWELL, Treasurer of Cook County, Illinois; and the COUNTY OF COOK, a body politic,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

ARNOLD M. FLAMM *
Prins, Flamm & Susman, Ltd.
33 North Dearborn Street
Chicago, Illinois 60602
(312) 346-3461

THOMAS R. MEITES
Meites & Frackman
135 South LaSalle Street
Chicago, Illinois 60603
(312) 263-0272

RICHARD M. GOLDSTEIN
Benson, Goldstein & Stengel
2463 North Lincoln Avenue
Chicago, Illinois 60614
(312) 327-7120

COUNSEL FOR PETITIONER

* Counsel of Record

Date: December 30, 1982

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

QUESTION PRESENTED

Whether the retention by Cook County of the interest earned on the refundable portion of bail bond deposits constitutes a taking without just compensation of the private property of those bail bond depositors who are ultimately discharged from all obligations under the bail bond and become entitled to a refund thereof.

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT:

I.

Review Should Be Granted To Clarify The Application Of *Webb's Fabulous Pharmacies, Inc. v. Beckwith* To Eighth Amendment Rights Regarding Bail Bond Deposits And The Status Of Such Funds Deposited With The State Under The Criminal Justice System In Light Of The Fifth Amendment's Prohibition Against Uncompensated Takings Of Private Property 6

II.

The Nonfederal Ground Upon Which The Appellate Court Affirmed The Dismissal Of The Complaint Is Not Adequate To Deprive This Court Of Jurisdiction 9

CONCLUSION 14

APPENDIX:

Order of the Illinois Supreme Court, October 5, 1982 ..... A-1

Order of the Illinois Appellate Court, April 19, 1982 ..... A-2

Order of the Illinois Appellate Court Disposing of Appeal Under Supreme Court Rule 23 ..... A-3

Supplemental Rule 23 Order of the Illinois Appellate Court Upon Denial of Petition for Rehearing A-7

Opinion of the Circuit Court of Cook County, Illinois A-9

Final Judgment of the Circuit Court of Cook County, Illinois, entered June 11, 1981 ..... A-23

IL Rev. Stats., ch. 38, ¶110-7 ..... A-24

TABLE OF AUTHORITIES

Cases

Abie State Bank v. Weaver, 282 U.S. 765 (1931) ... 12
Ancient Egyptian Arabic Order of Nobles of the Mystic Shrine v. Michaux, 279 U.S. 737 (1929) .. 13
Barr v. City of Columbia, 378 U.S. 146 (1964) 12, 13
Boddiker v. McPartlin, 379 Ill. 567 (1942) 10
Brinkerhoff-Faris Co. v. Hill, 281 U.S. 673 (1930) .. 12
Chicago Park District v. Kenroy, 374 N.E.2d 670 (Ill. App. 1975) aff'd in relevant part 78 Ill.2d 555 (1980) 10, 11
City of Elmhurst v. Kegerreis, 392 Ill. 195 (1945) . 10
Cohen v. United States, 82 S.Ct. 526 (1962) 9
Davis v. Wechsler, 263 U.S. 22 (1922) 12
Douglas v. State of Alabama, 380 U.S. 415 (1965) . 12
Godare v. Sterling Steel Casting Co., 430 N.E.2d 620 (Ill. App. 1981) 10
Hoffman v. Hoffman, 330 Ill. 413 (1928) 10
Kahler v. Don Williams Co., 375 N.E.2d 1034 (Ill. App. 1978) 10
Liner v. Jafco, Inc., 375 U.S. 301 (1964) 13
Morgan v. Finley, 105 Ill.App.3d 80 (1982) 11
NAACP v. State of Alabama ex rel. Flowers, 377 U.S. 288 (1964) 12
NAACP v. State of Alabama ex rel. Patterson, 357 U.S. 449 (1958) 12
People v. Bone, 82 Ill.2d 282, 412 N.E.2d 444 (1980) 10
Pillsbury v. Early, 325 Ill. 562 (1927) 10
Postal Telegraph Cable Co. v. City of Newport, 247 U.S. 464 (1918) 13
Stack v. Boyle, 342 U.S. 1 (1951) 9
United States v. Skrypeck, 505 F.2d 458 (D.C. Cir. 1974) 9

Ward v. Board of County Commissioners of Love County, 253 U.S. 17 (1920) 12
Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980) 4, 5, 6, 7, 8, 9
Wolfe v. State of North Carolina, 364 U.S. 177 (1960) 12
Wright v. State of Georgia, 373 U.S. 284 (1963) 12

Constitution

United States Constitution, Fifth Amendment 3, 4, 8
United States Constitution, Eighth Amendment ... 3, 8
Illinois Constitution, Article I, §15 ..... 3, 4

Statutes

IL Rev. Stats., ch. 38, ¶110-7 ..... 3, 4, 7

Text

Wright, Miller & Cooper, Federal Practice and Procedure, §§4402, 4406 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

JEROME P. JAMROCH, Individually and as Representative of a Class of Persons Similarly Situated,

Petitioner,

VS.

MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, Illinois; EDWARD J. ROSEWELL, Treasurer of Cook County, Illinois; and the COUNTY OF COOK, a body politic,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

Petitioner, Jerome P. Jamroch, individually and as representative of a class of persons similarly situated, prays that a writ of certiorari issue to review the order and judgment of the Appellate Court of Illinois, First Judicial District, entered on March 15, 1982, as thereafter supplemented on April 19, 1982, upon denial of rehearing.*

* Pursuant to Supreme Court Rule 28.1, Petitioner states that the only parties to this proceeding are Jerome P. Jamroch, Morgan M. Finley, Clerk of the Circuit Court of Cook County, Illinois, Edward J. Rosewell, Treasurer of Cook County, Illinois, and the County of Cook, a body politic of the State of Illinois.

OPINIONS BELOW

The order of the Supreme Court of Illinois denying Petition for Leave to Appeal is set forth at page A-1 of the Appendix hereto. The denial of the petition for rehearing in the Appellate Court of Illinois is reproduced at page A-2 of the Appendix. The order of the Appellate Court disposing of the appeal under Illinois Supreme Court Rule 23 is not published or otherwise reported, and is set forth commencing at page A-3 of the Appendix. The supplemental Rule 23 order of the Appellate Court upon denial of rehearing is not published or otherwise reported, and is set forth commencing at page A-7 of the Appendix. The unpublished opinion of the Circuit Court of Cook County, Illinois, is set forth beginning at page A-9, and the unpublished final judgment of that court appears at page A-23 of the Appendix.

JURISDICTION

The order of the Supreme Court of Illinois denying leave to appeal was entered on October 5, 1982, and this Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> "[N]or shall private property be taken for public use, without just compensation."

The Constitution of Illinois, Article 1, §15, states:

> "Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law."

IL Rev. Stat., ch. 38, ¶110-7 (See Appendix at A-24).

STATEMENT OF THE CASE

Petitioner, Jerome D. Jamroch, was arrested in Cook County in September, 1980, and charged with the criminal offense of attempted theft. For the purpose of securing a release from custody and assuring his appearance in court to answer the charge, Petitioner executed and delivered to the Respondent Finley, Clerk of the Circuit Court of Cook County, a bail bond in the principal amount of $1,000. Pursuant to the provisions of IL Rev. Stat., Ch. 38, ¶110-7, Petitioner paid to Respondent Finley a cash deposit in the sum of $100 being 10% of the bond.

Subsequently, the charge pending against Petitioner was stricken with leave to reinstate (referred to under local practice as an "SOL"), Petitioner was discharged of all obligations in the cause, and the conditions of

the bail bond were thereby performed. Accordingly, the Respondent clerk delivered to Petitioner a check for $90, being the amount of his bail deposit less 10% thereof deducted as "bail bond costs" pursuant to IL Rev. Stat., Ch. 38, ¶110-7(f).

The complaint alleged (R. C4) and the Respondents conceded (R. C41), that Petitioner's bail bond deposit, while in the custody of the clerk, was commingled with other bail bond deposits paid by persons similarly situated and invested in interest bearing obligations, and that the interest thereby earned was either retained by the clerk or else delivered over to the Respondent county treasurer, and in either event used for public purposes.

Approximately two months after his discharge and the receipt of his bail refund, Petitioner filed this action on behalf of himself and all other bail bond depositors who had actually become entitled, or would thereafter become entitled, to a refund of 90% of their bond deposits.*

The complaint, relying largely upon this Court's opinion in *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980), sought a declaratory judgment, an accounting and other relief on the ground that the retention by Respondents of the interest earned on Petitioner's bond deposit constituted a taking of Petitioner's property without just compensation in violation of the Fifth Amendment of the United States Constitution, as well as the comparable clause of the Illinois Constitution (R. C4).

The trial court, after extensive briefing and a full hearing, granted Respondents' motion to dismiss the complaint. In a lengthy opinion rendered from the bench

---

* The propriety of class action status was not determined by the trial court, nor by the Appellate Court, and is not involved in this Petition.

(App. A-9), that court held that bail bond deposits do not constitute the "private property" of the depositor, and on that basis sought to distinguish *Webb's Fabulous Pharmacies*. In the course of his opinion, however, the trial judge expressly rejected Respondents' argument that Jamroch's cause was barred under principles of res judicata or collateral estoppel (App. A-11-13).

Petitioner perfected a timely appeal to the Appellate Court of Illinois, First Judicial District. After the case had been fully briefed in that court, but prior to the scheduling of oral argument, the Appellate Court entered a so-called "Rule 23 Order" affirming the trial court judgment on grounds of res judicata (App. A-3). (Under Rule 23, promulgated by the Supreme Court of Illinois, such orders are not published, may not be cited and have no precedential value. IL Rev. Stat., ch. 110A, §23, as amended effective April 1, 1982). A petition for rehearing was thereafter filed and denied, but the denial was accompanied by a Supplemental Rule 23 Order (App. A-7).

As so supplemented, the Rule 23 Order of the Appellate Court held that it was the legal duty of the Petitioner to bring the matter of disposition and distribution of bail funds immediately before the judge in the original criminal court proceeding so that that court could exercise its legal jurisdiction. Neither the original nor the supplemental order addressed itself to the question of whether the instant case and the original criminal court case did or did not constitute the same "cause of action", nor to the consequences of such a determination with respect to the preclusive effect of the earlier judgment, even though that issue had been fully briefed by the parties.

The Illinois Supreme Court denied leave to appeal on October 5, 1982 (App. A-1).

REASONS FOR GRANTING THE WRIT

I.

Review Should Be Granted To Clarify The Application Of *Webb's Fabulous Pharmacies, Inc. v. Beckwith* To Eighth Amendment Rights Regarding Bail Bond Deposits And The Status Of Such Funds Deposited With The State Under The Criminal Justice System In Light Of The Fifth Amendment's Prohibition Against Uncompensated Takings Of Private Property.

In *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980), this Court, in a unanimous opinion, held unconstitutional a Florida statute which purported to authorize the court clerk to retain for public purposes the interest earned on interpleaded funds during the time those funds were in the clerk's custody. Inasmuch as the interpleaded fund "plainly was the private property of the persons ultimately determined by the court to be entitled thereto," the interest earned thereon was likewise held to be private property subject to constitutional protection:

> "Neither the Florida Legislature by statute, nor the Florida courts by judicial decree, may accomplish the result the county seeks simply by recharacterizing the principal as 'public money' because it is held temporarily by the court. The earnings of a fund are incidents of ownership of the fund itself and are property just as the fund itself is property. The state statute has the practical effect of appropriating for the county the value of the use of the fund for the period in which it is held in the registry.
>
> To put it another way: a State, by ipse dixit, may not transform private property into public property without compensation, even for the limited duration of the deposit in court. This is the very kind of thing that the Taking Clause of the Fifth Amendment was meant to prevent. That Clause stands as a shield

against the arbitrary use of governmental power." (449 U.S. at 164).

In this case, as in *Webb's*, the retention of the interest by the county cannot be justified as a fee for services rendered inasmuch as there is a separate statutorily prescribed fee for the clerk's services, i.e., 10% of the bail bond deposit. IL Rev. Stat., ch. 38, ¶110-7(f).

Although the Appellate Court never reached the merits of the constitutional argument, the trial court had sought to distinguish the instant case from *Webb's* on the ground that here there are certain contingencies under which the county may become entitled to the deposit (App. A-13-20). Thus, if the criminal defendant fails to appear for trial the bail bond may become subject to forfeiture, or if he does appear and is found guilty, the deposit may be applied in satisfaction of fines and costs imposed by the court. IL Rev. Stat., Ch. 38, ¶110-7(h). The existence of these possibilities, in the trial court's view, negated the contention that the bail bond deposits are being held only for the benefit of the bond depositors, and not for the benefit of the court or county. See *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161 (1980).

In truth, however, neither the Petitioner nor any member of the putative petitioner class is subject to these contingencies because the proposed class is defined in the complaint (R. C5) so as to include *only* those criminal defendants who posted a bail bond, paid a 10% deposit, were thereafter discharged of all obligation under the bond, and consequently became entitled to a refund of 90% of their bond deposit. Those criminal defendants who forfeit their bonds, or who are convicted and have their bond deposits applied to the payment of a fine, are not within the plaintiff class.

Apart from this argument, however, the mere existence of a possibility that the bond deposit will be forfeited at

some future time should not serve to deprive that deposit of its status as private property subject to the just compensation requirements of the constitution. Real estate, for example, is indubitably private property even though there always exists the possibility that it will be forfeited to the county, or to a tax buyer, in the event that the owner fails to pay his real estate taxes. Moreover, this Court's opinion in *Webb's* makes it very clear that interest follows the principal and is to be allocated to those who are *ultimately* to be the owners of that principal. Thus, the fact that ownership cannot be conclusively established until the court renders judgment is not significant. That, indeed, was also the case in *Webb's*.

The possibility that the bond deposit may eventually be applied in satisfaction of a fine imposed upon the depositor is even less of an impediment to private property status prior to the occurrence of such an event. Satisfaction of an outstanding indebtedness is clearly a benefit to the bond depositor. If no bond had been posted, the guilty defendant would presumably pay his fine from his own bank account—through an attachment if necessary. But the mere existence of a possibility that a bank account may, at some future date, be applied in satisfaction of an indebtedness to the State, surely does not mean that bank accounts are anything other than private property subject to constitutional protection under the Fifth Amendment.

The proper application of *Webb's Fabulous Pharmacies, Inc. v. Beckwith* to bail deposits is of paramount importance, not only to the Fifth Amendment's guarantee against wrongful takings, but also to the Eighth Amendment's guarantees regarding bail. *Webb's* was a civil dispute among private parties which involved the State only because of the State's relatively passive role as a stakeholder. In contrast, the State in the instant case is far

more deeply involved through the operation of its bail system. Under the Eighth and Fourteenth Amendments, a State can impose only reasonable conditions upon the exercise of the right to bail. *Stack v. Boyle*, 342 U.S. 1, 4-5 (1951); *Cohen v. United States*, 82 S.Ct. 526 (1962) (bail "excessive" if used for purposes other than assuring the presence of defendant at trial, i.e., for the collection of fines); *United States v. Skrypeck*, 505 F.2d 458 (D.C. Cir. 1974).

It is respectfully requested that review be granted here to clarify the application of *Webb's* to the constitutional guarantees regarding bail, as well as to make clear *Webb's* application to the taking of interest earned on funds deposited with the State or its instrumentalities in connection with the criminal justice system.

II.

The Nonfederal Ground Upon Which The Appellate Court Affirmed The Dismissal Of The Complaint Is Not Adequate To Deprive This Court Of Jurisdiction.

In its desire to avoid deciding the important federal question raised by the complaint, the Appellate Court, in both of its Rule 23 Orders, simply ignored the long and unbroken line of Illinois decisions which have drawn a distinction between "res judicata", on the one hand, and "estoppel by verdict" or "collateral estoppel", on the other hand, even though that distinction had been fully briefed (R. C36, 77-82) and had been expressly considered by the trial court and ruled upon favorably to Petitioner (App. A-11-13).* It is only where the two causes of action are the

* The more modern terminology, not yet embraced by the Illinois courts, employs instead the concepts of "issue preclusion" and "fact preclusion." See Wright, Miller & Cooper, Federal Practice and Procedure, §§4402, 4406.

same that a party is precluded from raising in the second action an issue which was not actually determined in the earlier case, even though that issue could have been raised and determined in that earlier action. When the two causes of action are different, the preclusive effect of the earlier judgment extends only to issues which were actually decided in that earlier case. The distinction is clearly set forth by the Illinois Supreme Court in *People v. Bone*, 82 Ill.2d 282, 286-7, 412 N.E.2d 444, 446 (1980):

> "There is, however, a difference between the effect of a judgment as a bar to the prosecution of a second action upon the same claim or demand and the effect of a judgment as an estoppel in another suit between the same parties on a different claim or cause of action . . . The former constitutes *res judicata* and operates as an absolute bar . . . 'not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.' . . . The latter constitutes collateral estoppel, or estoppel by verdict or judgment . . . and *concludes only 'those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered.'* Cromwell v. County of Sac (1877), 94 U.S. 351, 353, 24 L.Ed. 195, 197; Skolnick v. Petella (1941), 376 Ill. 500, 503, 34 N.E.2d 825." (Emphasis added.)

Other cases to the same effect include *Pillsbury v. Early*, 324 Ill. 562, 565 (1927); *Hoffman v. Hoffman*, 330 Ill. 413, 417 (1928); *Boddiker v. McPartlin*, 379 Ill. 567 (1942); *City of Elmhurst v. Kegerreis*, 392 Ill. 195 (1945); *Kahler v. Don Williams Co.*, 375 N.E.2d 1034, 1036 (Ill.App. 1978); *Godare v. Sterling Steel Casting Co.*, 430 N.E.2d 620, 622-23 (Ill.App. 1981). Indeed, the same court which decided this case had recently reached an opposite result in circumstances which the trial judge here found indistinguishable. *Chicago Park District v. Kenroy, Inc.*, 374

N.E.2d 670, 677-78 (Ill.App. 1978), aff'd. in relevant part, 78 Ill.2d 555, 567 (1980).*

The Appellate Court's heavy reliance upon its own opinion in *Morgan v. Finley*, 105 Ill.App.3d 80 (1982), rendered on the same day as the Rule 23 Order in this case, is clearly misplaced. In *Morgan*, the judge in the original criminal proceeding had expressly ruled upon the issue which the plaintiff there later sought to raise in a collateral action rather than through a direct appeal. In the instant case, by contrast, the question of Petitioner's right to interest was neither raised nor decided in the criminal court action.

This Petitioner recognizes that the courts of Illinois must remain free to change the law from time to time, even though every such change inevitably defeats the reasonable expectations of litigants and prospective litigants. Yet, in the instant case it is entirely clear that the Appellate Court did not intend any such change. The use of a Rule 23 Order, which is unpublished, noncitable and expressly lacking in precedential value, absolutely precludes any such contention.

This Petitioner recognizes that it is not the function of the Supreme Court of the United States to correct errors of law made by state courts in the interpretation of state

---

* The Appellate Court's attempt to distinguish *Chicago Park District v. Kenroy, Inc.* (App. A-5-6) is so patently question-begging as to confirm that Petitioner is correct in his contention that the ruling below has at least the effect, if not the intent, of evading review of the federal question. In both *Kenroy* and the instant case, the court which heard the earlier action indisputably had jurisdiction to determine the issue which was not actually raised, but which *could have been* raised there. In both cases, the earlier forum was not the "appropriate" or customary forum to litigate that issue.

law. Nevertheless, this Court has consistently recognized that where a federal claim has been properly asserted in a state court, and the claim is defeated on nonfederal grounds—especially nonfederal procedural grounds—it always remains within the province of this Court to determine whether that federal right "was denied in substance and effect, as by putting forward nonfederal grounds of decision that were without any fair or substantial support . . . [I]f nonfederal grounds, plainly untenable, may be thus put forward successfully, our power to review easily may be avoided." *Ward v. Board of County Commissioners of Love County*, 253 U.S. 17, 22 (1920). To the same effect, *Davis v. Wechsler*, 263 U.S. 22, 24-25 (1922) ("Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."); *Wolfe v. State of North Carolina*, 364 U.S. 177, 186 (1960) ("It thus becomes this Court's duty to ascertain whether the procedural grounds relied upon by the state court independently and adequately support its judgment."); *Douglas v. State of Alabama*, 380 U.S. 415, 422 (1965) ("The adequacy of state procedural bars to the assertion of federal questions is itself a federal question."); *Abie State Bank v. Weaver*, 282 U.S. 765, 772-73 (1931).

The employment by a state court of a novel procedural requirement—one without precedent in prior decisions—as a means of defeating the federal claim has not been countenanced by this Court. *NAACP v. State of Alabama ex rel. Patterson*, 357 U.S. 449, 456-58 (1958); *Brinkerhoff-Faris Co. v. Hill*, 281 U.S. 673, 679-81 (1930); *NAACP v. State of Alabama ex rel. Flowers*, 377 U.S. 288, 296-302 (1964); *Barr v. City of Columbia*, 378 U.S. 146, 149-150 (1964); *Wright v. State of Georgia*, 373 U.S. 284, 291 (1963).

Most closely in point, perhaps, is *Postal Telegraph Cable Co. v. City of Newport*, 247 U.S. 464, 473 (1918), in which this Court set aside a judgment of the Kentucky Court of Appeals which had upheld the defense of res judicata as a bar to the assertion of a federally grounded defense to a tax collection action. This Court first said: "But the question arises, whether the basis of fact upon which the state court rested its decision denying the asserted federal rights has any support in the record; for if it does not, it is our duty to review and correct the error." Then, after setting forth the "universally accepted" doctrine of res judicata, and inferring that "its obvious application to the facts of this case was inadvertently overlooked by the Court of Appeals," this Court went on to state:

> "*Res judicata*, like other kinds of estoppel, ordinarily is a matter of state law, and as the decision of the state court in this case in effect rests upon that ground, this of itself would be sufficient to sustain the judgment against reversal in this court, except for two queries that must first be answered: (a) Is the question of state law, in this case, independent of the federal questions? and (b) Is the decision reached upon that point sufficiently well founded to furnish adequate support for the judgment?"

The Court assumed an affirmative answer to the first query, but answered the second in the negative because the decision below was "so clearly ill founded that it cannot sustain the judgment."

See also cases such as *Liner v. Jafco, Inc.*, 375 U.S. 301, 304 (1964), holding that an erroneous state court finding of mootness cannot serve to deprive this Court of jurisdiction to determine a properly raised federal question, and *Ancient Egyptian Arabic Order of Nobles of the Mystic Shrine v. Michaux*, 279 U.S. 737, 744-45 (1929), rejecting a state court finding of laches as a bar to a federal claim because it lacked "fair support." Cf. *Barr v. City of Columbia*, 378 U.S. 146, 149-50 (1964) ("state procedural

requirements which are not strictly or regularly followed cannot deprive us of the right to review.")

In light of established Illinois precedent, Petitioner here simply could not have anticipated that his failure to raise the question of interest in the original criminal court action (conceding that the question *could* have been raised there) would serve to deny him any opportunity to argue that issue in any forum, at any time. Petitioner respectfully suggests that the action below constitutes a deprivation of basic due process rights. But whether or not that is the case, it surely does not meet the requirements of an adequate nonfederal ground for decision so as to deprive this Court of jurisdiction to decide the underlying federal question.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

ARNOLD M. FLAMM *
Prins, Flamm & Susman, Ltd.
33 North Dearborn Street
Chicago, Illinois 60602
(312) 346-3461

THOMAS R. MEITES
Meites & Frackman
135 South LaSalle Street
Chicago, Illinois 60603
(312) 263-0272

RICHARD M. GOLDSTEIN
Benson, Goldstein & Stengel
2463 North Lincoln Avenue
Chicago, Illinois 60614
(312) 327-7120

COUNSEL FOR PETITIONER

* Counsel of Record

Date: December 30, 1982